

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

YETI COOLERS, LLC,

Plaintiff,

vs.

HOME DEPOT U.S.A., INC., et al.,

Defendants.

Case No.: 1:17-cv-00342-RP

JURY TRIAL DEMANDED

**DECLARATION OF LANCE ALLEN IN SUPPORT OF
DEFENDANT HOME DEPOT U.S.A., INC.'S MOTION
TO STAY**

I, Lance Allen, declare as follows:

1. I am a Merchant with Home Depot U.S.A., Inc. ("Home Depot"). The facts set forth herein are based upon my personal knowledge. I would be willing and able to testify thereto if and when called upon to do so.

2. I understand that Home Depot and one of its suppliers, Takeya USA Corporation ("Takeya"), have been named as defendants in this action filed by plaintiff Yeti Coolers, LLC ("Yeti"), and that Yeti has claimed that certain drinkware products sold by Home Depot infringe Yeti's rights. I also understand that Yeti has filed additional cases against Gourmet Home Products ("GHP"), Cathy's Concepts, Inc. ("Cathy's"), Godinger Silver Art Ltd. ("Godinger"), and Viatek Consumer Products Group, Inc. ("Viatek") that make similar claims, and that those complaints allege that Home Depot sells the products accused of infringement.

3. Takeya, GHP, Cathy's, Godinger, and Viatek (the "Manufacturers") manufactured all of the accused products and supplied those products to Home Depot for sale online and in Home Depot's retail stores.

4. As a prerequisite to joining Home Depot's supplier network, all the Manufacturers have signed Supplier Buying Agreements with Home Depot. The Supplier Buying Agreement governs the business relationship between each Manufacturer and Home Depot. Pursuant to the Supplier Buying Agreements, Takeya, GHP, Cathy's, Godinger, and Viatek are contractually obligated to indemnify Home Depot against all third party intellectual property claims, such as the instant lawsuit filed by Yeti.

5. Home Depot is merely a downstream retailer of the products that Yeti accuses of infringement. Home Depot is not a manufacturer, designer, or supplier of those products. For that reason, Home Depot was not involved in any way in the design of the appearance of the accused products. Nor does Home Depot have any information regarding the development of the design of the accused products. The sole request made by Home Depot in relation to one accused tumbler, the 30 ounce Raw Steel tumbler supplied by GHP, was that GHP use higher quality steel and a 3-piece manufacturing process, which was in no way related to the external appearance of the product.

6. However, to the extent that Home Depot has any information relevant to this case such as advertising or sales information relating to the accused products, Home Depot is willing to disclose that information for purposes of this lawsuit.

7. In addition, if the Court grants Home Depot's motion and stays the claims against it, Home Depot is willing to be bound by the Court's determinations.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: June 30, 2017


Lance Allen